

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL JOSEPH MULDER,

Petitioner,

vs.

E.K. McDANIEL, *et al.*,

Respondents.

3:09-CV-00610-PMP-RAM

ORDER

In this action brought under 28 U.S.C. § 2254, petitioner, through counsel, has made a motion for a stay pursuant to *Rohan ex rel. Gates v. Woodford*, 334 F.3d 803 (9th Cir. 2003), which requires a court to stay capital habeas proceedings upon a showing that the petitioner is incompetent. Docket ##18/19. In relation to that motion, respondents have filed their own motion asking the court to issue an order permitting their mental health experts to conduct their own competency evaluation of Mulder and to conduct the tests they deem necessary for that purpose. Docket #23. Petitioner's counsel concedes that he cannot reasonably oppose respondents' motion, but asks the court to allow him to personally observe the respondents' psychological examination or, alternatively, to videotape the examination. Docket # 24. Petitioner's counsel further requests that respondents identify all mental health experts (accompanied by a curriculum vitae for each), as well as the prospective tests, protocols, and materials, they intend to use. *Id.*

With petitioner's counsel agreeing that respondents should have an opportunity to conduct a

1 psychological examination of the petitioner, respondents' motion for an order to that effect shall be
2 granted. As to the requests from petitioner's counsel, the court is not convinced that Mulder, his
3 counsel having initiated a *Rohan*-type inquiry, is entitled to have counsel present during the
4 respondents' examination, or to otherwise impose conditions on how the examination is to be
5 conducted. Respondents shall, however, identify the expert or experts who will examine the
6 petitioner on their behalf and provide petitioner's counsel a copy of a curriculum vitae for each such
7 expert.

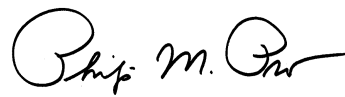
8 **IT IS THEREFORE ORDERED** that respondents' motion for order for psychological
9 examination (docket #23) is GRANTED.

10 **IT IS FURTHER ORDERED** that respondents shall have **fifteen (15) days** from the date
11 this order entered within which to designate the expert or experts who will examine the petitioner on
12 their behalf and to provide petitioner's counsel a copy of a curriculum vitae for each expert so
13 designated.

14 **IT IS FURTHER ORDERED** that respondents shall have **sixty (60) days** from the date this
15 order entered within which to have their experts complete their examination of the petitioner.

16 **IT IS FURTHER ORDERED** that respondents' motion for an extension of time within
17 which to file and serve their response to petitioner motion to stay (docket #25) is GRANTED.
18 Respondents shall have **ninety (90) days** from the date this order is entered within which to file their
19 response to the motion (docket ##18/19). In their response, respondents shall indicate whether, in
20 their view, an evidentiary hearing is necessary to resolve petitioner's motion to stay and, if so, the
21 contested issues of fact that will need to be addressed. Petitioner shall thereafter have **twenty (20)**
22 **days** within which to file a reply.

23 DATED: May 10, 2010.

24 

25 PHILIP M. PRO
26 United States District Judge